IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 8TH FEBRUARY 2007 / 19TH MAGHA 1928

WP(C).No. 3711 of 2007(P)

PETITIONER:

D.JOHN,
COMMERCIAL TAX OFFICER,
COMMERCIAL TAX OFFICE, CHATHANNOOR, KOLLAM DIST.
RESIDING AT GRACE VILLA, CHEERANCAVU,
EZHUKONE P.O., KOLLAM DISTRICT- 691 505.

BY ADV. SRI.MILLU DANDAPANI

RESPONDENTS:
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1. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT (TAXES)
(FINANCE DEPARTMENT) , THIRUVANANTHAPURAM.

2. THE COMMISSIONER,
COMMERCIAL TAX, THIRUVANANTHAPURAM.

3. INSPECTING ASSISTANT COMMISSIONER,
COMMERCIAL INVESTIGATION,
THIRUVANANTHAPURAM.

BY GOVT. PLEADER SHRI. P.NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXPT.P1: PHOTOCOPY OF THE ORDER OF PENALTY NO: A5.1659/2006/CT DT. 16.12.2006 ISSUED BY THE 2ND RESPONDENT TO THE EPTITIONER

EXT.P2: -DO- OF STAY PETITION DT.2.1.2007 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENTS

EXT.P3: -DO- OF JUDGMENT OF THIS HON'BLE COURT, DT.3.1.2007 RENDERED IN W.P(C) NO:221/2007 B

EXT.P4: -DO- OF ORDER NO.548/D2/07/TD DT.19.1.2007 OF THE 1ST RESPONDENT ISSUED TO THE PETITIONER

jj /True copy/

P.A.TO JUDGE

K.K. DENESAN, J.

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W.P.(C) No. 3711 OF 2007 P
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Dated this the 8th February, 2007

J U D G M E N T

The petitioner belongs to the cadre of Commercial Tax Officer. This Court as per Ext. P3 judgment directed the 1st respondent, the appellate authority under the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960, to consider and dispose of within a time limit, the statutory appeal filed by the petitioner, and in the meantime, to entertain the application filed by the petitioner for interim order and to pass orders within ten days. In purported compliance of the direction issued by this Court to consider and dispose of the interlocutory application filed by the petitioner, the Government have issued Ext. P4 order dated 19-1-2007. The last two paragraphs of the above order read:

> "As directed by the Hon'ble High Court, Government have examined the matter in detail. The orders issued by the disciplinary authority has been appealed against by you and the same is pending before the appellate Authority, Secretary (Taxes). As per judgment dated 03/01/2007 the appeal filed by you has to be disposed of within 2 months from the date of receipt of a copy of judgment, ie. before 08/03/07. The entire issue will be considered on merit at the time

of examination of the appeal.

> At this juncture Government find no reason to interfere with the orders of the Commissioner of Commercial Taxes, Thiruvananthapuram and hence the request to stay the order of the Commissioner of Commercial Taxes, Thiruvananthapuram is hereby rejected."

2. Learned senior counsel appearing for the petitioner submits that the reason appearing on the face of Ext. P4 is in fact no reason at all. It is at the most only a fact known to all the parties to this case. Why the Government did not consider it appropriate to grant the interim relief is not discernible from Ext. P4 order. The interim application cannot be disposed of stating that this Court has directed the appellate authority to take a final decision in the appeal within a time frame. This Court was well aware that the final decision will have to be taken within the time frame, because such a direction was given by the very same judgment which further directed the interlocutory application to be considered according to law. The contention urged in the circumstances that the Government should have assigned some reason which would withstand the test of law, even assuming that the Government was not inclined

to allow the interlocutory application, merits consideration.

3. Govt. Pleader submitted that in matters where interlocutory applications are disposed of, a detailed discussion is not contemplated. I feel that having regard to the circumstances under which this Court directed the Government to consider the interlocutory application of the petitioner, it is difficult to expect the Government to pass an order rejecting the application without assigning any valid reason at all, a reason which by any standard does not have the semblance of a reason. A mere statement of fact cannot be a substitute for a reason.

4. Ext. P4 is therefore set aside. The 1st respondent is directed to consider Ext. P2 application (Ext. P10 referred to in Ext. P3 judgment) as expeditiously as possible, in any event, within one week from the date of service of a copy of this judgment.

The writ petition is disposed of as above.

K.K. DENESAN
JUDGE

jan/